

Remarks

The inventorship of U.S. Patent 5,861,385 and this reissue patent application of said patent has been corrected as requested by Applicants and evidenced by the Filing Receipt from the United States Patent and Trademark Office.

Claims 5-8 are presented for examination and are pending in this application. No claims have been allowed. Claims 1-4 were cancelled in a Preliminary Amendment filed with the present Reissue Application. The Preliminary Amendment has been noted as received and entered by the Examiner.

The Examiner states the present Reissue Application was filed without the required Offer to Surrender the Original Patent, or if the original is lost or inaccessible, an Affidavit or Declaration to that effect. Applicants respectfully traverse this requirement and request reconsideration in view of the following remarks.

Applicants respectfully contend the original U.S. Patent 5,861,385 was surrendered at the time the present Reissue Application was filed. In view of this surrender of the original ribboned patent grant, Applicants respectfully request this rejection be withdrawn.

In the "Reissue Patent Application Transmittal" a document filed with this Reissue Application, in the left-hand column under "Application Elements" it should be noted the original U.S. Patent is identified as being surrendered. The noted reference is to the "ribboned original patent."

Further, on page 2 of the "Reissue Declaration by the Assignee, Power of Attorney and Surrender of Patent" it states,

"I surrender the above-identified Letters Patent which accompanies this paper and request that the Letters Patent be reissued to the said Eli Lilly and Company for the same invention upon the foregoing specification."

Enclosed as Exhibit A to this communication is a photocopy of the postcard receipt stamped by the USPTO identifying receipt of among other documents, the Declaration and Power of Attorney in this case. The "Reissue Patent Application Transmittal" and "Reissue Declaration by the Assignee, Power of Attorney and Surrender of Patent" should be of record in this case.

Applicants respectfully contend the Reissue Patent Application Transmittal document, the Reissue Declaration by the Assignee, Power of Attorney and Surrender of Patent and the postcard receipt clearly evidence the ribboned original patent was surrendered

to the USPTO with the filing of the present Reissue Application. In view of this evidence, Applicants respectfully request the requirement for the Offer to Surrender or surrender of the original patent has been completely fulfilled and the rejection on those grounds should be withdrawn.

Claims 5-8 stand as rejected under 35 U.S.C. 101 for "same invention double-patenting" as claiming the same invention as that of claims 1-4 of U.S. Patent 5,631,298.

Applicants respectfully acknowledge this rejection.

In view of the remarks made in this communication, Applicants respectfully request reconsideration and withdrawal of the rejection based upon failure to surrender or offer to surrender the original ribboned U.S. Patent grant.

Respectfully submitted,



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April 22, 2004



EXHIBIT A

PATENT

Dkt No. X-5683K Atty JCD

RECEIVED BY THE UNITED STATES PATENT & TRADEMARK OFFICE:

Org , CIP , Div , Con , Prov , PCT No 21906 U.S. PTO.

Application of: David R. Anderson, et al 10/670188

Titled: Growth Promotion

Consisting of Fee Transmittal, Utility Patent Transmittal and: 092403

Claims, Abstract, Specification (pages), Drawings (sheets),

Declaration and Power of Attorney X

National Phase Declaration

Preliminary Amendment X

Sheet 821 ; Diskette

Miscellaneous Papers:

IDS/1449 X

Assent By Assignee For Reissue Application; Consent By Assignee
For Change of Inventorship; Supplemental Declaration; Statement Agreeing
to Change Inventorship in Patent By Correctly Named Inventors; Statement
By Person Omitted As Inventor In Patent (2); Authority to Act on Behalf of Assignee

Express Mail Label No. EL 832894942 US

for Change of Inventorship; petition for correction of Inventorship of Patent /